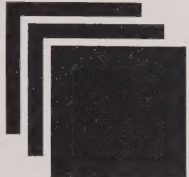
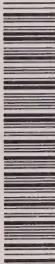


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# **DIVORCE ACT**

**OFFICE CONSOLIDATION**

**R.S.C. 1985, (2nd Supp.), c. 3**

amended by

**R.S.C. 1985, c.27 (2nd Supp.)**

**S.C. 1990, c.18**

**S.C. 1993, c.8**

**S.C. 1993, c.28**

**November 1994**

## **WARNING NOTE**

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# DIVORCE ACT

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## DIVORCE ACT

R.S.C.1985,c.3(2nd Supp.)

(Originally passed as S.C. 1986,c.4)

(Assented to 13th February, 1986)

**Amendments:** R.S.C. 1985, c.27 (2nd Supp.), s.10 (Sch., item 7); S.C. 1990, c.18; S.C. 1992, c.51, ss.46,67; S.C. 1993, c.8, ss.1-5, ss.19(1)-(2); S.C.1993, c.28, s.78, Sch. III, items 41-43 (not yet in force).

An Act respecting divorce and corollary relief.

### SHORT TITLE

Short title                    1. This Act may be cited as the *Divorce Act*.

### INTERPRETATION

Definitions                2. (1) In this Act,

"appellate court"        "appellate court", in respect of an appeal from a court, means the court exercising appellate jurisdiction with respect to that appeal;

"child of the marriage"   "child of the marriage" means a child of two spouses or former spouses who, at the material time,

(a) is under the age of sixteen years, or

(b) is sixteen years of age or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life;

"corollary relief proceeding"   "corollary relief proceeding" means a proceeding in a court in which either or both former spouses seek a support order or a custody order or both such orders;

"court"                    "court", in respect of a province, means

(a) for the Province of Ontario, the Ontario Court (General Division), [R.S.C. 1985, c.27 (2nd Supp.) s.10 (Sch., item 7); S.C.1992,c.51,s.46]

(a.1) for the Province of Prince Edward Island or Newfoundland, the trial division of the Supreme Court of the Province, [S.C.1992,c.51,s.46]

(b) for the Province of Quebec, the Superior Court,

(c) for the Provinces of Nova Scotia and British Columbia, the Supreme Court of the Province, [R.S.C. 1985, c.27 (2nd Supp.) s.10 (Sch., item 7); S.C.1992,c.51,s.46]

(d) for the Province of New Brunswick, Manitoba, Saskatchewan or Alberta, the Court of Queen's Bench for the Province, and

(e) for the Yukon Territory or the Northwest Territories, the Supreme Court thereof,

*[when S.C. 1993, c.28 comes into force on April 1, 1999, or on such earlier day or days as the Governor in Council may fix by order, paragraph (e) of the definition "court" in subsection 2(1) is repealed and the following substituted therefor:*

*(e) for the Yukon Territory, the Northwest Territories or Nunavut, the Supreme Court thereof, [S.C.1993,c.28,Sch.III, item 41] ]*

and includes such other court in the province the judges of which are appointed by the Governor General as is designated by the Lieutenant Governor in Council of the province as a court for the purposes of this Act;

"custody"	"custody" includes care, upbringing and any other incident of custody;
"custody order"	"custody order" means an order made under subsection 16(1);
"divorce proceeding"	"divorce proceeding" means a proceeding in a court in which either or both spouses seek a divorce alone or together with a support order or a custody order or both such orders;
"spouse"	"spouse" means either of a man or woman who are married to each other;
"support order"	"support order" means an order made under subsection 15(2);
"variation order"	"variation order" means an order made under subsection 17(1);
"variation proceeding"	"variation proceeding" means a proceeding in a court in which either or both former spouses seek a variation order.
Child of the marriage	<p>(2) For the purposes of the definition "child of the marriage" in subsection (1), a child of two spouses or former spouses includes</p> <p>(a) any child for whom they both stand in the place of parents; and</p> <p>(b) any child of whom one is the parent and for whom the other stands in the place of a parent.</p>
Term not restrictive	(3) The use of the term "application" to describe a proceeding under this Act in a court shall not be construed as limiting the name under which and the form and manner in which that proceeding may be taken in that court, and the name, manner and form of the proceeding in that court shall be such as is provided for by the rules regulating the practice and procedure in that court.
Idem	(4) The use in section 21.1 of the terms "affidavit" and "pleadings" to describe documents shall not be construed as limiting the name that may be used to refer to those documents in a court and the form of those



documents, and the name and form of the documents shall be such as is provided for by the rules regulating the practice and procedure in that court.

[S.C.1990,c.18,s.1]

## JURISDICTION

Jurisdiction in divorce proceedings

3. (1) A court in a province has jurisdiction to hear and determine a divorce proceeding if either spouse has been ordinarily resident in the province for at least one year immediately preceding the commencement of the proceeding.

Jurisdiction where two proceedings commenced on different days

(2) Where divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a divorce proceeding was commenced first has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the second divorce proceeding shall be deemed to be discontinued.

Jurisdiction where two proceedings commenced on same day

(3) Where divorce proceedings between the same spouses are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court–Trial Division has exclusive jurisdiction to hear and determine any divorce proceeding then pending between the spouses and the divorce proceedings in those courts shall be transferred to the Federal Court–Trial Division on the direction of that Court.

Jurisdiction in corollary relief proceedings

4. (1) A court in a province has jurisdiction to hear and determine a corollary relief proceeding if

(a) either former spouse is ordinarily resident in the province at the commencement of the proceeding; or

(b) both former spouses accept the jurisdiction of the court.

[S.C.1993,c.8,s.1]

Jurisdiction where two proceedings commenced on different days

(2) Where corollary relief proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a corollary relief proceeding was commenced first has exclusive jurisdiction to hear and determine any corollary relief proceeding then pending between the former spouses in respect of that matter and the second corollary relief proceeding shall be deemed to be discontinued.

[S.C.1993,c.8,s.1]

Jurisdiction where two proceedings commenced on same day

(3) Where proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day

and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court–Trial Division has exclusive jurisdiction to hear and determine any corollary relief proceeding then pending between the former spouses in respect of that matter and the corollary relief proceedings in those courts shall be transferred to the Federal Court–Trial Division on the direction of that Court.

[S.C. 1993,c.8,s.1]

Jurisdiction in variation  
proceedings

**5. (1)** A court in a province has jurisdiction to hear and determine a variation proceeding if

(a) either former spouse is ordinarily resident in the province at the commencement of the proceeding; or

(b) both former spouses accept the jurisdiction of the court.

Jurisdiction where two  
proceedings commenced on  
different days

(2) Where variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on different days and the proceeding that was commenced first is not discontinued within thirty days after it was commenced, the court in which a variation proceeding was commenced first has exclusive jurisdiction to hear and determine any variation proceeding then pending between the former spouses in respect of that matter and the second variation proceeding shall be deemed to be discontinued.

Jurisdiction where two  
proceedings commenced on  
same day

(3) Where variation proceedings between the same former spouses and in respect of the same matter are pending in two courts that would otherwise have jurisdiction under subsection (1) and were commenced on the same day and neither proceeding is discontinued within thirty days after it was commenced, the Federal Court–Trial Division has exclusive jurisdiction to hear and determine any variation proceeding then pending between the former spouses in respect of that matter and the variation proceedings in those courts shall be transferred to the Federal Court–Trial Division on the direction of that Court.

Transfer of divorce  
proceeding where custody  
application

**6. (1)** Where an application for an order under section 16 is made in a divorce proceeding to a court in a province and is opposed and the child of the marriage in respect of whom the order is sought is most substantially connected with another province, the court may, on application by a spouse or on its own motion, transfer the divorce proceeding to a court in that other province.

Transfer of corollary relief  
proceeding  
where custody application

(2) Where an application for an order under section 16 is made in a corollary relief proceeding to a court in a province and is opposed and the child of the marriage in respect of whom the order is sought is most substantially connected with another province, the court may, on application by a former spouse or on its own motion, transfer the corollary relief proceeding to a court in that other province.

Transfer of variation  
proceeding where custody  
application

(3) Where an application for a variation order in respect of a custody order is made in a variation proceeding to a court in a province and is opposed and the child of the marriage in respect of whom the variation order is



sought is most substantially connected with another province, the court may, on application by a former spouse or on its own motion, transfer the variation proceeding to a court in that other province.

Exclusive jurisdiction

(4) Notwithstanding sections 3 to 5, a court in a province to which a proceeding is transferred under this section has exclusive jurisdiction to hear and determine the proceeding.

Exercise of jurisdiction  
by judge

7. The jurisdiction conferred on a court by this Act to grant a divorce shall be exercised only by a judge of the court without a jury.

## **DIVORCE**

Divorce

8. (1) A court of competent jurisdiction may, on application by either or both spouses, grant a divorce to the spouse or spouses on the ground that there has been a breakdown of their marriage.

Breakdown of marriage

(2) Breakdown of a marriage is established only if

(a) the spouses have lived separate and apart for at least one year immediately preceding the determination of the divorce proceeding and were living separate and apart at the commencement of the proceeding; or

(b) the spouse against whom the divorce proceeding is brought has, since celebration of the marriage,

(i) committed adultery, or

(ii) treated the other spouse with physical or mental cruelty of such a kind as to render intolerable the continued cohabitation of the spouses.

Calculation of period of  
separation

(3) For the purposes of paragraph (2)(a),

(a) spouses shall be deemed to have lived separate and apart for any period during which they lived apart and either of them had the intention to live separate and apart from the other; and

(b) a period during which spouses have lived separate and apart shall not be considered to have been interrupted or terminated

(i) by reason only that either spouse has become incapable of forming or having an intention to continue to live separate and apart or of continuing to live separate and apart of the spouses's own volition, if it appears to the court that the separation would probably have continued if the spouse had not become so incapable, or

(ii) by reason only that the spouses have resumed cohabitation during a period of, or periods totalling, not more than ninety days with reconciliation as its primary purpose.



Duty of legal adviser	<p>9. (1) It is the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a spouse in a divorce proceeding</p> <p>(a) to draw to the attention of the spouse the provisions of this Act that have as their object the reconciliation of spouses, and</p> <p>(b) to discuss with the spouse the possibility of the reconciliation of the spouses and to inform the spouse of the marriage counselling or guidance facilities known to him or her that might be able to assist the spouses to achieve a reconciliation,</p> <p>unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so.</p>
Idem	<p>(2) It is the duty of every barrister, solicitor, lawyer or advocate who undertakes to act on behalf of a spouse in a divorce proceeding to discuss with the spouse the advisability of negotiating the matters that may be the subject of a support order or a custody order and to inform the spouse of the mediation facilities known to him or her that might be able to assist the spouses in negotiating those matters.</p>
Certification	<p>(3) Every document presented to a court by a barrister, solicitor, lawyer or advocate that formally commences a divorce proceeding shall contain a statement by him or her certifying that he or she has complied with this section.</p>
Duty of court - reconciliation	<p>10. (1) In a divorce proceeding, it is the duty of the court, before considering the evidence, to satisfy itself that there is no possibility of the reconciliation of the spouses, unless the circumstances of the case are of such a nature that it would clearly not be appropriate to do so.</p>
Adjournment	<p>(2) Where at any stage in a divorce proceeding it appears to the court from the nature of the case, the evidence or the attitude of either or both spouses that there is a possibility of the reconciliation of the spouses, the court shall</p> <p>(a) adjourn the proceeding to afford the spouses an opportunity to achieve a reconciliation; and</p> <p>(b) with the consent of the spouses or in the discretion of the court, nominate</p> <p>(i) a person with experience or training in marriage counselling or guidance, or</p> <p>(ii) in special circumstances, some other suitable person,</p> <p>to assist the spouses to achieve a reconciliation.</p>
Resumption	<p>(3) Where fourteen days have elapsed from the date of any adjournment under subsection (2), the court shall resume the proceeding on the application of either or both spouses.</p>

Nominee not competent or compellable	(4) No person nominated by a court under this section to assist spouses to achieve a reconciliation is competent or compellable in any legal proceedings to disclose any admission or communication made to that person in his or her capacity as a nominee of the court for that purpose.
Evidence not admissible	(5) Evidence of anything said or of any admission or communication made in the course of assisting spouses to achieve a reconciliation is not admissible in any legal proceedings.
Duty of court - bars	<p>11. (1) In a divorce proceeding, it is the duty of the court</p> <p>(a) to satisfy itself that there has been no collusion in relation to the application for a divorce and to dismiss the application if it finds that there was collusion in presenting it;</p> <p>(b) to satisfy itself that reasonable arrangements have been made for the support of any children of the marriage and, if such arrangements have not been made, to stay the granting of the divorce until such arrangements are made; and</p> <p>(c) where a divorce is sought in circumstances described in paragraph 8(2)(b), to satisfy itself that there has been no condonation or connivance on the part of the spouse bringing the proceeding, and to dismiss the application for a divorce if that spouse has condoned or connived at the act or conduct complained of unless, in the opinion of the court, the public interest would be better served by granting the divorce.</p>
Revival	(2) Any act or conduct that has been condoned is not capable of being revived so as to constitute a circumstance described in paragraph 8(2)(b).
Condonation	(3) For the purposes of this section, a continuation or resumption of cohabitation during a period of, or periods totalling, not more than ninety days with reconciliation as its primary purpose shall not be considered to constitute condonation.
Definition of "collusion"	(4) In this section, "collusion" means an agreement or conspiracy to which an applicant for a divorce is either directly or indirectly a party for the purpose of subverting the administration of justice, and includes any agreement, understanding or arrangement to fabricate or suppress evidence or to deceive the court, but does not include an agreement to the extent that it provides for separation between the parties, financial support, division of property or the custody of any child of the marriage.
Effective date generally	12. (1) Subject to this section, a divorce takes effect on the thirty-first day after the day on which the judgement granting the divorce is rendered.
Special circumstances	<p>(2) Where, on or after rendering a judgement granting a divorce,</p> <p>(a) the court is of the opinion that by reason of special circumstances the divorce should take effect earlier than the thirty-first day after the day on which the judgement is rendered, and</p>



(b) the spouses agree and undertake that no appeal from the judgement will be taken, or any appeal from the judgement that was taken has been abandoned,

the court may order that the divorce takes effect at such earlier time as it considers appropriate.

Effective date where appeal	(3) A divorce in respect of which an appeal is pending at the end of the period referred to in subsection (1), unless voided on appeal, takes effect on the expiration of the time fixed by law for instituting an appeal from the decision on that appeal or any subsequent appeal, if no appeal has been instituted within that time.
Certain extensions to be counted	(4) For the purposes of subsection (3), the time fixed by law for instituting an appeal from a decision on an appeal includes any extension thereof fixed pursuant to law before the expiration of that time or fixed thereafter on an application instituted before the expiration of that time.
No late extensions of time for appeal	(5) Notwithstanding any other law, the time fixed by law for instituting an appeal from a decision referred to in subsection (3) may not be extended after the expiration of that time, except on an application instituted before the expiration of that time.
Effective date where decision of Supreme Court of Canada	(6) A divorce in respect of which an appeal has been taken to the Supreme Court of Canada, unless voided on the appeal, takes effect on the day on which the judgment on the appeal is rendered.
Certificate of divorce	(7) Where a divorce takes effect in accordance with this section, a judge or officer of the court that rendered the judgment granting the divorce or, where that judgment has been appealed, of the appellate court that rendered the judgment on the final appeal, shall, on request, issue to any person a certificate that a divorce granted under this Act dissolved the marriage of the specified persons effective as of a specified date.
Conclusive proof	(8) A certificate referred to in subsection (7), or a certified copy thereof, is conclusive proof of the facts so certified without proof of the signature or authority of the person appearing to have signed the certificate.
Legal effect throughout Canada	<b>13.</b> On taking effect, a divorce granted under this Act has legal effect throughout Canada.
Marriage dissolved	<b>14.</b> On taking effect, a divorce granted under this Act dissolves the marriage of the spouses.

### **COROLLARY RELIEF**

Definition of "spouse"	<b>15.</b> (1) In this section and section 16, "spouse" has the meaning assigned by subsection 2(1) and includes a former spouse.
Order for support	(2) A court of competent jurisdiction may, on application by either or both spouses, make an order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of

- (a) the other spouse;
- (b) any or all children of the marriage; or
- (c) the other spouse and any or all children of the marriage.

## Interim order for support

(3) Where an application is made under subsection (2), the court may, on application by either or both spouses, make an interim order requiring one spouse to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of

- (a) the other spouse,
- (b) any or all children of the marriage, or
- (c) the other spouse and any or all children of the marriage,

pending determination of the application under subsection (2).

## Terms and conditions

(4) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.

## Factors

(5) In making an order under this section, the court shall take into consideration the condition, means, needs and other circumstances of each spouse and of any child of the marriage for whom support is sought, including

- (a) the length of time the spouses cohabited;
- (b) the functions performed by the spouse during cohabitation; and
- (c) any order, agreement or arrangement relating to support of the spouse or child.

## Spousal misconduct

(6) In making an order under this section, the court shall not take into consideration any misconduct of a spouse in relation to the marriage.

## Objectives of order for support of spouse

(7) An order made under this section that provides for the support of a spouse should

- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
- (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the spouses pursuant to subsection (8);
- (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and



(d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Objectives of order for support of child

(8) An order made under this section that provides for the support of a child of the marriage should

(a) recognize that the spouses have a joint financial obligation to maintain the child; and

(b) apportion that obligation between the spouses according to their relative abilities to contribute to the performance of the obligation.

Assignment of order

(9) An order made under this section may be assigned to

(a) any minister of the Crown for Canada designated by the Governor in Council;

(b) any minister of the Crown for a province designated by the Lieutenant Governor in Council of the province;

(c) any member of the Council of the Yukon Territory designated by the Commissioner of the Yukon Territory; or

(d) any member of the Council of the Northwest Territories designated by the Commissioner of the Northwest Territories.

*[when S.C. 1993, c.28 comes into force on April 1, 1999, or on such earlier day or days as the Governor in Council may fix by order, subsection 15(9) is amended by striking out the word "or" at the end of paragraph (c) thereof, by adding the word "or" at the end of paragraph (d) thereof and by adding thereto the following paragraph:*

*(e) any member of the Executive Council of Nunavut designated by the Commissioner of Nunavut.*

*[S.C.1993,c.28,Sch.III, item 42] ]*

Order for custody

**16. (1)** A court of competent jurisdiction may, on application by either or both spouses or by any other person, make an order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage.

Interim order for custody

(2) Where an application is made under subsection (1), the court may, on application by either or both spouses or by any other person, make an interim order respecting the custody of or the access to, or the custody of and access to, any or all children of the marriage pending determination of the application under subsection (1).

Application by other person

(3) A person, other than a spouse, may not make an application under subsection (1) or (2) without leave of the court.

Joint custody or access

(4) The court may make an order under this section granting custody of, or access to, any or all children of the marriage to any one or more persons.

Access	(5) Unless the court orders otherwise, a spouse who is granted access to a child of the marriage has the right to make inquiries, and to be given information, as to the health, education and welfare of the child.
Terms and conditions	(6) The court may make an order under this section for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.
Order respecting change of residence	(7) Without limiting the generality of subsection (6), the court may include in an order under this section a term requiring any person who has custody of a child of the marriage and who intends to change the place of residence of that child to notify, at least thirty days before the change or within such other period before the change as the court may specify, any person who is granted access to that child of the change, the time at which the change will be made and the new place of residence of the child.
Factors	(8) In making an order under this section, the court shall take into consideration only the best interests of the child of the marriage as determined by reference to the condition, means, needs and other circumstances of the child.
Past conduct	(9) In making an order under this section, the court shall not take into consideration the past conduct of any person unless the conduct is relevant to the ability of that person to act as a parent of a child.
Maximum contact	(10) In making an order under this section, the court shall give effect to the principle that a child of the marriage should have as much contact with each spouse as is consistent with the best interests of the child and, for that purpose, shall take into consideration the willingness of the person for whom custody is sought to facilitate such contact.
Order for variation, rescission or suspension	<p>17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,</p> <p>(a) a support order or any provision thereof on application by either or both former spouses; or</p> <p>(b) a custody order or any provision thereof on application by either or both former spouses or by any other person.</p>
Application by other person	(2) A person, other than a former spouse, may not make an application under paragraph (1)(b) without leave of the court.
Terms and conditions	(3) The court may include in a variation order any provision that under this Act could have been included in the order in respect of which the variation order is sought.
Factors for support order	(4) Before the court makes a variation order in respect of a support order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of either former spouse or of any child of the marriage for whom support is or was sought occurring since the making of the support order or the last variation order made in respect of



that order, as the case may be, and, in making the variation order, the court shall take into consideration that change.

Factors for custody order	(5) Before the court makes a variation order in respect of a custody order, the court shall satisfy itself that there has been a change in the condition, means, needs or other circumstances of the child of the marriage occurring since the making of the custody order or the last variation order made in respect of that order, as the case may be, and, in making the variation order, the court shall take into consideration only the best interests of the child as determined by reference to that change.
Conduct	(6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.
Objectives of variation order varying order for support of former spouse	<p>(7) A variation order varying a support order that provides for the support of a former spouse should</p> <ul style="list-style-type: none"> <li>(a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;</li> <li>(b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above the obligation apportioned between the former spouses pursuant to subsection (8);</li> <li>(c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and</li> <li>(d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.</li> </ul>
Objectives of variation order varying order for support of child	<p>(8) A variation order varying a support order that provides for the support of a child of the marriage should</p> <ul style="list-style-type: none"> <li>(a) recognize that the former spouses have a joint financial obligation to maintain the child; and</li> <li>(b) apportion that obligation between the former spouses according to their relative abilities to contribute to the performance of the obligation.</li> </ul>
Maximum contact	(9) In making a variation order varying a custody order, the court shall give effect to the principle that a child of the marriage should have as much contact with each former spouse as is consistent with the best interests of the child and, for that purpose, where the variation order would grant custody of the child to a person who does not currently have custody, the court shall take into consideration the willingness of that person to facilitate such contact.
Limitation	(10) Notwithstanding subsection (1), where a support order provides for support for a definite period or until the happening of a specified event, a court may not, on an application instituted after the expiration of that period or the happening of that event, make a variation order for the purpose of

resuming that support unless the court is satisfied that

(a) a variation order is necessary to relieve economic hardship arising from a change described in subsection (4) that is related to the marriage; and

(b) the changed circumstances, had they existed at the time of the making of the support order or the last variation order made in respect of that order, as the case may be, would likely have resulted in a different order.

Copy of order

(11) Where a court makes a variation order in respect of a support order or a custody order made by another court, it shall send a copy of the variation order, certified by a judge or officer of the court, to that other court.

Variation order by affidavit, etc.

17.1 Where both former spouses are ordinarily resident in different provinces, a court of competent jurisdiction may, in accordance with any applicable rules of the court, make a variation order pursuant to subsection 17(1) on the basis of the submissions of the former spouses, whether presented orally before the court or by means of affidavits or any means of telecommunication, if both former spouses consent thereto.  
[S.C.1993,c.8,s.2]

Definitions

18. (1) In this section and section 19,

"Attorney General"

"Attorney General", in respect of a province, means

(a) for the Yukon Territory, the member of the Council of the Yukon Territory designated by the Commissioner of the Yukon Territory,

(b) for the Northwest Territories, the member of the Council of the Northwest Territories designated by the Commissioner of the Northwest Territories, and

*[when S.C. 1993, c.28 comes into force on April 1, 1999, or on such earlier day or days as the Governor in Council may fix by order, the definition "Attorney General" in subsection 18(1) is amended by striking out the word "and" at the end of paragraph (b) thereof and by adding thereto, immediately after paragraph (b) thereof, the following paragraph:*

*(b.1) for Nunavut, the member of the Executive Council of Nunavut designated by the Commissioner of Nunavut, and  
[S.C.1993,c.28,Sch.III, item 43] ]*

(c) for the other provinces, the Attorney General of the province,

and includes any person authorized in writing by the member or Attorney General to act for the member or Attorney General in the performance of a function under this section or section 19;

"provisional order"

"provisional order" means an order made pursuant to subsection (2).



Provisional order	<p>(2) Notwithstanding paragraph 5(1)(a) and subsection 17(1), where an application is made to a court in a province for a variation order in respect of a support order and</p> <p>(a) the respondent in the application is ordinarily resident in another province and has not accepted the jurisdiction of the court, or both former spouses have not consented to the application of section 17.1 in respect of the matter, and</p> <p>(b) in the circumstances of the case, the court is satisfied that the issues can be adequately determined by proceeding under this section and section 19,</p> <p>the court shall make a variation order with or without notice to and in the absence of the respondent, but such order is provisional only and has no legal effect until it is confirmed in a proceeding under section 19 and, where so confirmed, it has legal effect in accordance with the terms of the order confirming it.</p> <p>[S.C.1993,c.8,s.3]</p>
Transmission	<p>(3) Where a court in a province makes a provisional order, it shall send to the Attorney General for the province</p> <p>(a) three copies of the provisional order certified by a judge or officer of the court;</p> <p>(b) a certified or sworn document setting out or summarizing the evidence given to the court; and</p> <p>(c) a statement giving any available information respecting the identification, location, income and assets of the respondent.</p>
Idem	<p>(4) On receipt of the documents referred to in subsection (3), the Attorney General shall send the documents to the Attorney General for the province in which the respondent is ordinarily resident.</p>
Further evidence	<p>(5) Where, during a proceeding under section 19, a court in a province remits the matter back for further evidence to the court that made the provisional order, the court that made the order shall, after giving notice to the applicant, receive further evidence.</p>
Transmission	<p>(6) Where evidence is received under subsection (5), the court that received the evidence shall forward to the court that remitted the matter back a certified or sworn document setting out or summarizing the evidence, together with such recommendations as the court that received the evidence considers appropriate.</p>
Transmission	<p><b>19.</b> (1) On receipt of any documents sent pursuant to subsection 18(4), the Attorney General for the province in which the respondent is ordinarily resident shall send the documents to a court in the province.</p>
Procedure	<p>(2) Subject to subsection (3), where documents have been sent to a court pursuant to subsection (1), the court shall serve on the respondent a copy of the documents and a notice of a hearing respecting confirmation of the provisional order and shall proceed with the hearing, in the absence of the</p>

applicant, taking into consideration the certified or sworn document setting out or summarizing the evidence given to the court that made the provisional order.  
[S.C.1993,c.8,s.4(1)]

Return to Attorney General	(3) Where documents have been sent to a court pursuant to subsection (1) and the respondent apparently is outside the province and is not likely to return, the court shall send the documents to the Attorney General for that province, together with any available information respecting the location and circumstances of the respondent.
Idem	(4) On receipt of any documents and information sent pursuant to subsection (3), the Attorney General shall send the documents and information to the Attorney General for the province of the court that made the provisional order.
Right of respondent	(5) In a proceeding under this section, the respondent may raise any matter that might have been raised before the court that made the provisional order.
Further evidence	(6) Where, in a proceeding under this section, the respondent satisfies the court that for the purpose of taking further evidence or for any other purpose it is necessary to remit the matter back to the court that made the provisional order, the court may so remit the matter and adjourn the proceeding for that purpose.
Order of confirmation or refusal	(7) At the conclusion of a proceeding under this section, the court shall make an order [S.C.1993,c.8,s.4(2)] <ul style="list-style-type: none"> <li>(a) confirming the provisional order without variation;</li> <li>(b) confirming the provisional order with variation; or</li> <li>(c) refusing confirmation of the provisional order.</li> </ul>
Further evidence	(8) The court, before making an order confirming the provisional order with variation or an order refusing confirmation of the provisional order, shall decide whether to remit the matter back for further evidence to the court that made the provisional order.
Interim order for support	(9) Where a court remits a matter pursuant to this section, the court may make an interim order requiring the respondent to secure or pay, or to secure and pay, such lump sum or periodic sums, or such lump sum and periodic sums, as the court thinks reasonable for the support of <ul style="list-style-type: none"> <li>(a) the applicant,</li> <li>(b) any or all children of the marriage, or</li> <li>(c) the applicant and any or all children of the marriage,</li> </ul> pending the making of an order under subsection (7).



Terms and conditions	(10) The court may make an order under subsection (9) for a definite or indefinite period or until the happening of a specified event and may impose such other terms, conditions or restrictions in connection therewith as it thinks fit and just.
Provisions applicable	(11) Subsections 17(4) and (6) to (8) apply, with such modifications as the circumstances require, in respect of an order made under subsection (9) as if it were a variation order referred to in those subsections.
Report and filing	<p>(12) On making an order under subsection (7), the court in a province shall</p> <p>(a) send a copy of the order, certified by a judge or officer of the court, to the Attorney General for that province, to the court that made the provisional order and, where that court is not the court that made the support order in respect of which the provisional order was made, to the court that made the support order;</p> <p>(b) where an order is made confirming the provisional order with or without variation, file the order in the court; and</p> <p>(c) where an order is made confirming the provisional order with variation or refusing confirmation of the provisional order, give written reasons to the Attorney General for that province and to the court that made the provisional order.</p>
Definition of "court"	<b>20.</b> (1) In this section, "court", in respect of a province, has the meaning assigned by subsection 2(1) and includes such other court having jurisdiction in the province as is designated by the Lieutenant Governor in Council of the province as a court for the purposes of this section.
Legal effect throughout Canada	(2) Subject to subsection 18(2), an order made under section 15, 16 or 17 or subsection 19(9) has legal effect throughout Canada.
Enforcement	<p>(3) An order that has legal effect throughout Canada pursuant to subsection (2) may be</p> <p>(a) registered in any court in a province and enforced in like manner as an order of that court; or</p> <p>(b) enforced in a province in any other manner provided for by the laws of that province.</p>

## APPEALS

Appeal to appellate court	<b>21.</b> (1) Subject to subsections (2) and (3), an appeal lies to the appellate court from any judgment or order, whether final or interim, rendered or made by a court under this Act.
Restriction on divorce appeals	(2) No appeal lies from a judgement granting a divorce on or after the day on which the divorce takes effect.
Restriction on order appeals	(3) No appeal lies from an order made under this Act more than thirty days after the day on which the order was made.

- Extension (4) An appellate court or a judge thereof may, on special grounds, either before or after the expiration of the time fixed by subsection (3) for instituting an appeal, by order extend that time.
- Powers of appellate court (5) The appellate court may
- (a) dismiss the appeal; or
  - (b) allow the appeal and
    - (i) render the judgement or make the order that ought to have been rendered or made, including such order or such further or other order as it deems just, or
    - (ii) order a new hearing where it deems it necessary to do so to correct a substantial wrong or miscarriage of justice.
- Procedure on appeals (6) Except as otherwise provided by this Act or the rules or regulations, an appeal under this section shall be asserted, heard and decided according to the ordinary procedure governing appeals to the appellate court from the court rendering the judgment or making the order being appealed.

## GENERAL

- Definition of "spouse" **21.1** (1) In this section, "spouse" has the meaning assigned by subsection 2(1) and includes a former spouse.  
[S.C.1990,c.18,s.2]
- Affidavit re removal of barriers to religious remarriage (2) In any proceedings under this Act, a spouse (in this section referred to as the "deponent") may serve on the other spouse and file with the court an affidavit indicating
- (a) that the other spouse is the spouse of the deponent;
  - (b) the date and place of the marriage, and the official character of the person who solemnized the marriage;
  - (c) the nature of any barriers to the remarriage of the deponent within the deponent's religion the removal of which is within the other spouse's control;
  - (d) where there are any barriers to the remarriage of the other spouse within the other spouse's religion the removal of which is within the deponent's control, that the deponent
    - (i) has removed those barriers, and the date and circumstances of that removal, or
    - (ii) has signified a willingness to remove those barriers, and the date and circumstances of that signification;
  - (e) that the deponent has, in writing, requested the other spouse to remove all of the barriers to the remarriage of the deponent within the



deponent's religion the removal of which is within the other spouse's control;

(f) the date of the request described in paragraph (e); and

(g) that the other spouse, despite the request described in paragraph (e), has failed to remove all of the barriers referred to in that paragraph.  
[S.C.1990,c.18,s.2]

Powers of court where  
barriers not removed

(3) Where a spouse who has been served with an affidavit under subsection (2) does not

(a) within fifteen days after that affidavit is filed with the court or within such longer period as the court allows, serve on the deponent and file with the court an affidavit indicating that all of the barriers referred to in paragraph (2)(e) have been removed, and

(b) satisfy the court, in any additional manner that the court may require, that all of the barriers referred to in paragraph (2)(e) have been removed,

the court may, subject to any terms that the court considers appropriate,

(c) dismiss any application filed by that spouse under this Act, and

(d) strike out any other pleadings and affidavits filed by that spouse under this Act.

[S.C.1990,c.18,s.2]

Special case

(4) Without limiting the generality of the court's discretion under subsection (3), the court may refuse to exercise its powers under paragraphs (3)(c) and (d) where a spouse who has been served with an affidavit under subsection (2)

(a) within fifteen days after that affidavit is filed with the court or within such longer period as the court allows, serves on the deponent and files with the court an affidavit indicating genuine grounds of a religious or conscientious nature for refusing to remove the barriers referred to in paragraph (2)(e); and

(b) satisfies the court, in any additional manner that the court may require, that the spouse has genuine grounds of a religious or conscientious nature for refusing to remove the barriers referred to in paragraph (2)(e).

[S.C.1990,c.18,s.2]

Affidavits

(5) For the purposes of this section, an affidavit filed with the court by a spouse must, in order to be valid, indicate the date on which it was served on the other spouse.

[S.C.1990,c.18,s.2]

Where section does  
not apply

(6) This section does not apply where the power to remove the barrier to religious remarriage lies with a religious body or official.

[S.C.1990,c.18,s.2]

Recognition of foreign divorce	<b>22.</b> (1) A divorce granted, on or after the coming into force of this Act, pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so shall be recognized for all purposes of determining the marital status in Canada of any person, if either former spouse was ordinarily resident in that country or subdivision for at least one year immediately preceding the commencement of proceedings for the divorce.
Idem	(2) A divorce granted, after July 1, 1968, pursuant to a law of a country or subdivision of a country other than Canada by a tribunal or other authority having jurisdiction to do so, on the basis of the domicile of the wife in that country or subdivision determined as if she were unmarried and, if she was a minor, as if she had attained the age of majority, shall be recognized for all purposes of determining the marital status in Canada of any person.
Other recognition rules preserved	(3) Nothing in this section abrogates or derogates from any other rule of law respecting the recognition of divorces granted otherwise than under this Act.
Provincial laws of evidence	<b>23.</b> (1) Subject to this or any other Act of Parliament, the laws of evidence of the province in which any proceedings under this Act are taken, including the laws of proof of service of any document, apply to such proceedings.
Presumption	(2) For the purposes of this section, where any proceedings are transferred to the Federal Court–Trial Division under subsection 3(3) or 5(3), the proceedings shall be deemed to have been taken in the province specified in the direction of the Court to be the province with which both spouses or former spouses, as the case may be, are or have been most substantially connected.
Proof of signature or office	<b>24.</b> A document offered in a proceeding under this Act that purports to be certified or sworn by a judge or an officer of a court shall, unless the contrary is proved, be proof of the appointment, signature or authority of the judge or officer and, in the case of a document purporting to be sworn, of the appointment, signature or authority of the person before whom the document purports to be sworn.
Definition of "competent authority"	<b>25.</b> (1) In this section, "competent authority", in respect of a court, or appellate court, in a province means the body, person or group of persons ordinarily competent under the laws of that province to make rules regulating the practice and procedure in that court.
Rules	(2) Subject to subsection (3), the competent authority may make rules applicable to any proceedings under this Act in a court, or appellate court, in a province, including, without limiting the generality of the foregoing, rules <ul style="list-style-type: none"> <li>(a) regulating the practice and procedure in the court, including the addition of persons as parties to the proceedings;</li> <li>(b) respecting the conduct and disposition of any proceedings under this Act without an oral hearing;</li> </ul>



(b.1) respecting the application of section 17.1 in respect of proceedings for a variation order;  
[S.C.1993,c.8,s.5]

(c) regulating the sittings of the court;

(d) respecting the fixing and awarding of costs;

(e) prescribing and regulating the duties of officers of the court;

(f) respecting the transfer of proceedings under this Act to or from the court; and

(g) prescribing and regulating any other matter considered expedient to attain the ends of justice and carry into effect the purposes and provisions of this Act.

Exercise of power	(3) The power to make rules for a court or appellate court conferred by subsection (2) on a competent authority shall be exercised in the like manner and subject to the like terms and conditions, if any, as the power to make rules for that court conferred on that authority by the laws of the province.
Not statutory instruments	(4) Rules made pursuant to this section by a competent authority that is not a judicial or quasi-judicial body shall be deemed not to be statutory instruments within the meaning and for the purposes of the <i>Statutory Instruments Act</i> .
Regulations	<p><b>26.</b> (1) The Governor in Council may make regulations for carrying the purposes and provisions of this Act into effect and, without limiting the generality of the foregoing, may make regulations</p> <p>(a) respecting the establishment and operation of a central registry of divorce proceedings in Canada; and</p> <p>(b) providing for uniformity in the rules made pursuant to section 25.</p>
Regulations prevail	(2) Any regulations made pursuant to subsection (1) to provide for uniformity in the rules prevail over those rules.
Fees	<b>27.</b> (1) The Governor in Council, may, by order, authorize the Minister of Justice to prescribe a fee to be paid by any person to whom a service is provided under this Act or the regulations.
Agreements	(2) The Minister of Justice may, with the approval of the Governor in Council, enter into an agreement with the government of any province respecting the collection and remittance of any fees prescribed pursuant to subsection (1).

## CONSEQUENTIAL AMENDMENTS

R.S., c. B-3

### *Bankruptcy Act*

**28.** Paragraph 178(1)(c) of the *Bankruptcy Act* is repealed and the following substituted therefor:

"(c) any debt or liability under a support, maintenance or affiliation order or under an agreement for maintenance and support of a spouse or child living apart from the bankrupt;"

R.S., c. G-2

### *Garnishment, Attachment and Pension Diversion Act*

**29.** The definition "financial support order" in subsection 32(1) of the *Garnishment, Attachment and Pension Diversion Act* is repealed and the following substituted therefor:

"financial support order"

" "financial support order" means, subject to subsection (2), an order or judgment for maintenance, alimony or support, including an order or judgment for arrears of payments, made pursuant to the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, or the *Divorce Act* or pursuant to the law of a province relating to family financial support;"

R.S., c. M-6

### *Merchant Seamen Compensation Act*

**30.** Paragraph 44(b) of the French version of the *Merchant Seamen Compensation Act* is repealed and the following substituted therefor:

"b) soit que le marin, bien que résidant au Canada, ne pourvoit pas à l'entretien de sa femme et de ses enfants, et qu'une ordonnance de pourvoir à l'entretien de cette femme ou de cette famille, ou une ordonnance alimentaire, a été rendue par un tribunal compétent contre ce marin,"

R.S., c. P-6

### *Pension Act*

**31.** (1) Subsection 47(1) of the *Pension Act* is repealed and the following substituted therefor:

Pension to person awarded  
alimony, support or  
maintenance

"**47.** (1) A person who has been divorced, judicially separated or separated pursuant to a written or other agreement from a member of the forces who has died is not entitled to a pension unless the person was awarded alimony, support or maintenance or was entitled to an allowance under the terms of the separation agreement, in which case the Commission may award to the person

(a) the pension the person would have been entitled to as a surviving spouse of that member, or

(b) a pension equal to the alimony, support or maintenance awarded to the person or the allowance to which the person was entitled under the terms of the separation agreement,

whichever is the lesser."



(2) Subsection 47(3) of the said Act is repealed and the following substituted therefor:

Pension where no alimony, support, maintenance or alimentary allowance payable

"(3) Notwithstanding subsection (1), where a person has been divorced, judicially separated or separated pursuant to a written or other agreement from a member of the forces who has died, and the person is in a dependent condition, the Commission may, in its discretion, award a pension at a rate not exceeding the rate provided for a surviving spouse in Schedule II or determined pursuant to subsection 45(3), whichever rate is applicable, although the person has not been awarded alimony, support, maintenance or an alimentary allowance or is not entitled to an allowance under the terms of the separation agreement, if, in the opinion of the Commission, the person would have been entitled to an award of alimony, support, maintenance or an alimentary or other allowance had the person made application therefor under due process of law."

### TRANSITIONAL PROVISIONS

Proceedings based on facts arising before commencement of Act

**32.** Proceedings may be commenced under this Act notwithstanding that the material facts or circumstances giving rise to the proceedings or to jurisdiction over the proceedings occurred wholly or partly before the day on which this Act comes into force.

Proceedings commenced before commencement of Act

**33.** Proceedings commenced under the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, before the day on which this Act comes into force and not finally disposed of before that day shall be dealt with and disposed of in accordance with that Act as it read immediately before that day, as though it had not been repealed.

Variation and enforcement of orders previously made

**34. (1)** Any order made under subsection 11(1) of the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, including any such order made pursuant to section 33 of this Act, and any order to the like effect made corollary to a decree of divorce granted in Canada before July 2, 1968 or granted on or after that day pursuant to subsection 22(2) of that Act may be varied, rescinded, suspended or enforced in accordance with sections 17 to 20, other than subsection 17(10), of this Act as if

(a) the order were a support order or custody order, as the case may require; and

(b) in subsections 17(4) and (5), the words "or the last order made under subsection 11(2) of the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, varying that order" were added immediately before the words "or the last variation order made in respect of that order".

Enforcement of orders previously made

**(2)** Any order made under section 10 of the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, including any such order made pursuant to section 33 of this Act, may be enforced in accordance with section 20 of this Act as if it were an order made under section 15 or 16 of this Act, as the case may require.

Assignment of orders  
previously made

(3) Any order for the maintenance of a spouse or child of the marriage made under section 10 or 11 of the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, including any such order made pursuant to section 33 of this Act, and any order to the like effect made corollary to a decree of divorce granted in Canada before July 2, 1968 or granted on or after that day pursuant to subsection 22(2) of that Act may be assigned to any person designated pursuant to subsection 15(9).

Procedural laws continued

**35.** The rules and regulations made under the *Divorce Act*, chapter D-8 of the Revised Statutes of Canada, 1970, and the provisions of any other law or of any rule, regulation or other instrument made thereunder respecting any matter in relation to which rules may be made under subsection 25(2) that were in force in Canada or any province immediately before the day on which this Act comes into force and that are not inconsistent with this Act continue in force as though made or enacted by or under this Act until they are repealed or altered by rules or regulations made under this Act or are, by virtue of the making of rules or regulations under this Act, rendered inconsistent with those rules or regulations.

### **COMMENCEMENT**

Commencement

**36.** This Act shall come into force on a day to be fixed by proclamation.





